IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5323 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)
Versus
AMRUTSINH KODARSINH CHAUHAN - Respondent(s)

==========

Appearance :
MR IM PANDYA ASST.GOVERNMENT PLEADER for Petitioner(s) : 1,
MR KD PANDYA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/06/2007

ORAL JUDGMENT

1. Heard Mr.I.M. Pandya, learned counsel for the petitioner and Mr.K.D. Pandya, learned counsel for the respondent.
2. The State – petitioner, being aggrieved by the Award dtd.3/5/1990 passed in Reference (LCK) No.310 of 1988

passed by the Principal Officer, Labour Court, Kalol (North Gujarat), is before this Court with a submission that the Labour Court was unjustified in making the award in favour of the petitioner.

3. Short facts necessary for disposal of the present petition are that the respondent workman was employed as a daily wager in the year 1983. According to the case of the petitioner – State, the petitioner issued directions on 4/1/1986 to join service at Sardarpur, but the respondent did not join the duty and, thereafter, abandoned the services. Notices were issued to the respondent workman to join at the place where the respondent was transferred, but the respondent did not comply with the transfer order, therefore, on 18/1/1986, the State Government, without any further notice, treating the petitioner to be a temporary employee having no right to continue on the post, terminated him. It is not in dispute before me that neither a notice was issued nor one month's salary in cash in lieu of the notice period was paid to him.

4. Being aggrieved by the action of the State Government, the respondent sought a reference. The Labour Court, after receiving the Reference, issued notices to the

parties, allow them to lead evidence and after hearing the parties, made award in favour of the workman.

5. Mr.I.M. Pandya, learned counsel for the State submits that the respondent workman having not completed 240 days within 12 calender months just preceding the date of termination, his removal would not come within the mischief of sec.25-F of the Industrial Disputes Act. His further submission is that the respondent workman had abandoned the services, therefore also, the Labour Court could not make an award in his favour.

6. Mr.K.D. Pandya, learned counsel for the respondent, however, submits that from the calculation shown by the learned Labour Court, it would clearly appear that in the year 1985, the workman had worked for 276 days and in the year 1986, he had worked for 21 days. He submits that if the workman did not join the service after 4/1/1986, then too, within a period of 12 calender months i.e. from 5/1/1985 to 4/1/1986, the respondent workman had worked for 280 days. His further submission is that in case a workman had worked for more than 240 days, he would be deemed to be in continues service and such an employee, without a notice or without wages in lieu of one months notice cannot be terminated.

7. From the calculations made by the learned court below, it appears that in the year 1985, the respondent workman had worked for 276 days and in the year 1986, he had worked for 21 days. Assuming that the respondent workman did not join the transferred post and remained absent w.e.f. 4/1/1986, then 12 calender months just preceding the date of retrenchment, assuming everything in favour of the State would start from 5/1/1985. If the workman had worked for more than 240 days within 12 calender months just preceding the date of removal or retrenchment, then, he would be deemed to be in continues service as defined under sec.25-B of the Industrial Disputes Act. Such a person cannot be removed from services, unless he is given one months notice in writing indicating reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice.
8. In view of the undisputed facts that the notice for one month or wages in lieu of such notice was not paid to the respondent workman, removal of the workman would fall within the mischief of retrenchment.
9. Learned Labour Court was justified in making the award

in favour of the workman. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. There shall be no order as to costs.

(R.S. GARG, J.)

rafik